

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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PLR-110548-05

Date:
August 25, 2005

LEGEND

Trust 1 =
Date 1 =
Decedent =

Date 2 =
Trust 2 =
Partnership =
Date 3 =
A =
B =
Accounting =
Firm =
Year 1 =

Dear :

This is in response to your authorized representative's letter dated May 3, 2004, requesting a ruling regarding the application of § 2632 of the Internal Revenue Code to Trust 1.

The facts and representations submitted are summarized as follows: On Date 1, Decedent established Trust 1, an irrevocable trust with generation-skipping transfer (GST) tax potential.

Article 1 of Trust 1 provides that the trustees shall divide the trust property into separate trusts of equal value, creating one trust named for Decedent's daughter, and one trust named for Decedent's son. Article 2 provides, generally, that the trustees shall distribute the entire net income of each child's trust to the respective child

beneficiary and make discretionary distributions of principal for the respective child's support, education, and medical care. Article 3 provides, generally, that upon the death of the child for whom such trust was created, the assets of such trust shall be distributed either pursuant to a limited testamentary power of appointment granted to such child, or in default of appointment, to the then living descendants of such child, or if none, to the then living descendants of Decedent.

On Date 2, Decedent and Trust 2, Decedent's revocable trust, established Partnership. Decedent held the general partnership units and Trust 2 held the limited partnership units. On Date 3, Decedent, as trustee of Trust 2, assigned A limited partnership units in Partnership to Trust 1. It is represented that the value of the A limited partnership units in Partnership was \$B.

Decedent retained Accounting Firm to prepare and file his Year 1 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax return") reporting the transfer to Trust 1. On Schedule A, part 1 of the Year 1 gift tax return, Accounting Firm properly identified the property that was the subject of the gift, *i.e.*, A limited partnership units in Partnership valued at \$B. Also, Accounting Firm properly reported on Schedule C, part 2, line 5 and on the Notice of Allocation that Decedent was allocating \$B of GST exemption. However, on Schedule A, part 1 and on the Notice of Allocation, Accounting Firm inadvertently misidentified the donee of the gift. It is represented that Decedent intended to allocate a portion of his GST exemption to Trust 1, the trust to which the partnership units reported on Schedule A were transferred.

Decedent's estate has requested a ruling that Decedent's Year 1 gift tax return substantially complied with the requirements of § 2632 and §26.2632-1(b) of the Generation-Skipping Transfer Tax Regulations for making a timely allocation of GST exemption to Trust 1 such that Trust 1 has an inclusion ratio of zero.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), in effect at the time of the transfer, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed

for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2)(i) provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

In this case, Decedent did not comply with the instructions on Form 709 in that Schedule A, part 1 and the Notice of Allocation misidentified the actual donee, Trust 1. After carefully examining the facts disclosed on the return and objective evidence submitted and the representations made, we conclude that information contained on the Year 1 gift tax return is sufficient to constitute a timely allocation of \$B of Decedent's GST exemption to Trust 1. See Rev. Rul. 61-128, 1961-2 C.B. 150.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. In addition, we express or imply no opinion regarding the value of the property transferred to Trust 1.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Melissa C. Liquerman
Chief, Branch 9
(Passthroughs & Special Industries)

Enclosures:

Copy of letter
Copy for § 6110 purposes

cc: